IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

Bail Appl..No. 5005 of 2007()

CRMP.1706/2007 of DISTRICT COURT, KOTTAYAM
CRIME NO.265/07 OF MUNDAKKAYAM POLICE STATION

.....

PETITIONERS : ACCUSED 1 TO 4:

---

1. SUNIL, S/O.JOSEPH,
   THANNIPARAYIL HOUSE, KORUTHODU P.O.,
   KANJIRAPPALLY, KOTTAYAM DISTRICT.

2. ANU KUMAR M.K., S/O.KUTTAPPAN,
   MULLAPPALLIYIL HOUSE, KORUTHODU P.O.,
   ERUMELY, KOTTAYAM DISTRICT.

3. AJI, THOOLIKKATTU HOUSE,
   KORUTHODU P.O., ERUMELY, KOTTAYAM DISTRICT.

4. SEBASTIAN KURUVILA, KARAKKATTU KUNNEL,
   KORUTHODU P.O., KOTTAYAM DISTRICT.

BY ADV. SRI.JOBI JOSE KONDODY

RESPONDENTS: STATE:

STATE OF KERALA REPRESENTED BY THE
SUB INSPECTOR OF POLICE, MUNDAKKAYAM POLICE
STATION, KOTTAYAM DISTRICT THROUGH THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA AT ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5005 of 2007

Dated this the 20th day of August, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 to 4. They face allegations, inter alia under Sections 308 and 324 r/w 34 I.P.C. The alleged incident took place on 08.07.07. A counter case has also been registered. Investigation is in progress in both the cases. The petitioners apprehend imminent arrest.

2. The crux of the allegations against the petitioners is that they on account of prior animosity arising out of an earlier incident, in furtherance of their common intention attacked the victims two in number with dangerous weapons - a knife (petitioners 2 to 4) and sword stick (1st accused). Serious injuries were caused including a 1 X 1 c.m penetrating injury to the chest of one of the victims. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. In fact, they were victims of aggression and not the aggressors. The counter case has been registered for offences punishable, inter alia, under Section 324 r/w 34 I.P.C. In fact, the injuries suffered by the victim in that counter case is

serious. That crime ought to have been registered under Section 326 I.P.C. Police is not acting fairly. In these circumstances, the petitioners pray that directions under Section 438 Cr.P.C may be issued in favour of them.

3. The learned Public Prosecutor opposes the application. The police is not acting unfairly at all. Prior animosity is the motive for the incident in this crime. Accused 3 and 4 have criminal antecedents also. The nature of the allegations and the nature of the injuries suffered by the victim do all suggest convincingly that the inclusion of the allegation under Section 308 I.P.C is well justified. At any rate, this is not a fit case where the powers under Section 438 Cr.P.C can or ought to be invoked. In the counter case, the allegations were initially raised inter alia under Section 324 I.P.C. If it turns out that the injury suffered is grievous, appropriate steps shall be taken in the counter case. At any rate, the fact that a counter case is pending is no reason to invoke the extraordinary equitable discretion under Section 438 Cr.P.C in favour of the petitioners. The learned Public Prosecutor submits that according to the prosecution, after the incident, the injured, the victims in this case were lying in the scene of the crime and the petitioners did not allegedly allow others to remove them to the hospital. Irritated by such behaviour, the local people had

allegedly indulged in stone throwing against the petitioners. That is how they suffered injuries, it is alleged.

4. I have considered all the relevant inputs. I shall not embark on any detailed discussion about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that I am satisfied that this is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate having jurisdiction. They must then seek regular bail in the ordinary course. I have no reason to assume that the allegation under Section 308 I.P.C has been included vexatiously in this crime. In coming to this conclusion, I have taken note the broad circumstances as also the nature of the injuries allegedly suffered by the victim.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-